

implemented by Defendant McDonald which are a restriction on Plaintiffs' right to conduct their religious practices by excluding them in the human remains protocols adopted by the Defendants. Specifically, Plaintiff Tap Pilam Coahuiltecan Nation (hereinafter, "TPCN") is a tribal community of American Indians who trace their ancestry to the Spanish Colonial Missions of Texas and Northeastern Mexico, including Mission San Antonio de Valero, which is also known as "The Alamo." See affidavit of Alston Thoms attached hereto and incorporated by reference as Exhibit "R". Plaintiff Raymond Hernandez is an enrolled member of the Tap Pilam Coahuiltecan Nation who is a direct descendant of ancestors from Mission San Antonio de Valero and serves on the Tribal Council of the Nation. Plaintiff San Antonio Missions Cemetery Association is a nonprofit association of lineal descendants of those buried in the San Antonio Missions Cemeteries, including the Mission San Antonio de Valero Cemetery. Plaintiffs are the next of kin and the ancestors to the remains buried at the Alamo Mission.

2. The Tap Pilam Coahuiltecan Nation has previously conducted reinternments of ancestral remains at the Alamo and other sites in Texas. This has become a common practice since the passage of NAGPRA, and its consequential requirement for museums, universities and archaeological investigations to reinter Native American human remains and funerary objects by transferring possession of them to their affiliated tribal community. Among the core religious beliefs of the Tap Pilam Coahuiltecan Nation surrounding reinternments is the requirement to perform a forgiveness ceremony, asking the deceased for forgiveness for disturbing of their final resting place. Alongside this forgiveness ceremony, the remains are reinterred according to the associated funerary practices of the ancestor being reinterred. In the case of the Alamo, it would follow Roman Catholic practice. Non-baptized ancestors, would follow traditional internment practices.

3. Additionally, when ancestral remains are reinterred, tribal elders take a solemn vow to perform a remembrance ceremony each year on the anniversary of the date of reinternment. This stems from the religious belief that those whose burials have been disturbed, are also disturbed on their spiritual journey in the afterlife. The forgiveness ceremony, reinternment and annual remembrance ceremony are conducted in order to allow the ancestor to return to their afterlife journey. Performance of the remembrance ceremony is sacred vow to those who undertake it. Raymond Hernandez, and other members of the Tap Pilam Coahuiltecan Nation, took such a vow when he performed the reinternment of ancestral remains inside the Alamo Chapel in 1995. At that time, the Alamo was under management of the Daughters of the Republic of Texas who agreed to allow the performance of the annual remembrance ceremony.

4. This annual remembrance ceremony at the Alamo Chapel is the highlight of a weeklong holiday each September among the tribe known as the “La Semana de Recuerdos” (The Week of Remembrance). It includes the Fiesta de Recuerdos (“Feast of Remembrance”) and concludes with the El Llanto de los Muerto (known as “the wailing”). The ceremony has been performed uninterrupted since 1995, under all three management regimes of the Alamo. This religious practice is not only limited to the Alamo site but other sites where bodies have been reinterred, including the Reinternment Cemetery at Fort Hood, Texas and Mission San Juan. The Tap Pilam burial and funerary practices are unique to them, they are a syncretic fusion of Roman Catholic belief and traditional Peyotism and lies at the core of their religious beliefs.

5. Due to the heavy burden of the solemn vows involved with each reinternment, they are performed at specific times of the year, specifically to mark the change of seasons. La Semana de Recuerdos is held in September because it marks the month of the largest number of deaths at Mission Valero (the Alamo) due to historic epidemics that ravaged the Indian community during

that month in the 18th century. Defendants forcibly stopped the performance of the last scheduled remembrance ceremony on September 7, 2019. Plaintiffs followed the usual practice of informing and attempting to schedule their annual event. Alamo Rangers were dispatched to prohibit tribal members, including Raymond Hernandez, from entering the Alamo Chapel to perform the ceremony. Meanwhile, tourists and members of the general public, were allowed to enter on that day. It is the religious belief of the Plaintiffs that this ceremony must be performed at the burial site of the reinterred ancestors and cannot be performed elsewhere, or by proxy. Elderly, ill and disabled tribal elders go to great lengths to fulfill their sacred vows under this practice. It is the religious belief of the Tap Pilam Coahuiltecan Nation that when this sacred vow is maintained the spirits will continue to provide guidance, healing and blessings as a result of the practice. However, if the ceremonies are not performed, they believe that there will be the opposite spiritual repercussions and that evil will come their way.

6. Further, Bush created a policy, that is implemented by McDonald, that excludes the Plaintiffs from participating in the human remains protocol for human remains found at the Alamo Complex during its redevelopment, thus denying them the ability to perform their essential religious practices for disturbed burials of their ancestors. Specifically, all similar and related projects currently and, in the recent past, have utilized human remains protocols that allowed the Tap Pilam Coahuiltecan Nation to participate. However, in this case, Defendants have selectively applied and interpreted federal laws, not applicable to the project by their own admission, in a manner that only grants access to federally recognized Indian tribes and ignored other federal laws and the City of San Antonio's Unified Development Code. Such arbitrary decisions to pick and choose which laws to apply is not only confusing, but, was calculated to exclude the Tap Pilam Coahuiltecan Nation from participating on the Archaeological Committee

established by the Bush and McDonald who developed the human remains protocols on the project.

7. Most shocking is the fact that Bush policy, implemented by McDonald, allows five federally recognized Indian tribes to serve on the committee as Tribal monitors. It should be pointed out that Bush and McDonald take the position that since federal recognized Indian tribes are represented at the site there is no discrimination. However, such assertion is not only flawed but is appalling as Bush's policy adopts the belief that all Indians are the same. Nothing is further from the truth. Invisibility is the modern form of racism against Native Americans. Public discourse on racial discrimination tends to focus on when groups of people are seen as different, but racial discrimination also occurs when a group of people is not seen at all. The lack of exposure to realistic, contemporary, and humanizing portrayals of Native people creates a deep and stubborn unconscious bias in the non-Native mind. Rooted in this unconscious bias is the idea that Native people are not real or even human. However, each Native American community has their own customs, religious beliefs, funerary practices and speak different languages. Just because federally recognized Indian tribes are allowed to participate at the Alamo redevelopment, does not permit the Defendants from justifying their excluding of the Tap Pilam Coahuiltecan Nation, and is wholly discriminatory. The American Indian tribes that Bush and McDonald have chosen at the exclusion of the Tap Pilam are not native to the area, four have no historic connection to Mission Valero, while the fifth, the Apache, were the historical enemies of the Coahuiltecan and were responsible for the deaths of many of those buried at the site. These actions by Bush are facially discriminatory and inflammatory. They have denied a culturally affiliated tribal community representation and engagement, yet invite unaffiliated tribes, some from out of state, with vastly different cultural and religious beliefs, differing

funerary practices and no historical connection to the site to stand in their place and rely on the erroneous premise that Plaintiffs are not Indians because they are not federally recognized. The reason for this is plainly obvious, a culturally affiliated tribe, such as Tap Pilam Coahuiltecan Nation will have a greater degree of oversight, concern and care for remains that are lineal ancestors than people who lack such attachment. Bush and the GLO are seeking to skirt the oversight and protections of culturally affiliated communities that Congress and the Texas Legislature have determined is necessary and in the public interest for a project such as this. Bush's policy by only allowing other federal recognized Indian tribes to participate and exclude Plaintiffs is shameful as federal recognition does not dictate ethnicity or race. Bush's policy is premised on the rationale that somehow Plaintiffs are not allowed to participate because they are not in fact Indians based solely on the erroneous premise that they are not federally recognized. Federal Courts have ruled that federal recognition is a political act of Congress and does not grant or remove aboriginal sovereignty. Such backward antiquated logic is not proper and is hurtful, and should be seen for what it actually is—discriminatory.

8. Further, the Defendants are publicly stating that there is no cemetery located at the Alamo. This assertion is intellectually dishonest and being used solely to skirt federal, state and local laws designed to protect historic cemeteries and to downplay the Plaintiffs' ties to the missions. It is common knowledge that every Spanish Colonial Mission established and maintained a cemetery, and there is ample evidence that a cemetery was established and continues to exist at the Alamo. Three articulated burials were uncovered as recently as December 2019 at the site, and dozens more have been disturbed by prior projects. There is no doubt that the Defendants Bush and McDonald are purposely making spurious claims to exclude the Plaintiffs from the process at all costs.

9. Bush is the head of policy decisions for the GLO and was in charge of implementing the policy to set up the structure of the Alamo Trust, Inc., and several nonprofits. As a result of Bush's policy to play hide-the-ball by creating various entities, which was intentionally calculated to not only pull the curtain closed and install a non-transparent policy to facilitate secret meetings and to shelter the major players involved in the project, but, more importantly, to craft a way to block the Plaintiffs from participating in the project, as he wants to rush the project through without distractions from any persons who would require that their ancestors be respected. By reason of the aforementioned policy, created, adopted, and enforced under color of state law, Defendants Bush and McDonald have unconstitutionally deprived Plaintiffs of their fundamental first amendment right to conduct their religious practices and denies them equal protection of the law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. Plaintiffs further seek a declaration that Defendants violated their clearly established constitutional rights as set forth in this Complaint; a declaration that Defendants' actions to exclude the Plaintiffs from participating in the Archaeology Committee of the Human Remains Protocol violates the United States Constitution and 42 U.S.C. § 1983 as set forth in this Complaint; Defendants actions to prevent Plaintiffs from exercising their religion violates clearly established constitutional rights. Plaintiffs further seek a preliminary and permanent injunction enjoining the enforcement of Defendants' policy to exclude the Plaintiffs from the Human Remains Protocol Process as set forth in this Complaint; and nominal damages for the past loss of Plaintiffs' constitutional rights. Plaintiffs also seek an award of reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988 and other applicable law.

B. PARTIES

10. Plaintiff Tap Pilam Coahuiltecan Nation, is an Indian tribe headquartered at 1313 Guadalupe St., San Antonio, Texas 78207.

11. Plaintiff San Antonio Missions Cemetery Association is a Texas nonprofit corporation located at 1313 Guadalupe St., Suite 104, San Antonio, Texas 78207.

12. Plaintiff Raymond Hernandez is an individual residing at 273 Nicks Road, Comfort, Texas 78013.

13. Defendant Douglass W. McDonald, is sued in his official capacity as the CEO of the Alamo Trust, Inc. which is a Texas nonprofit corporation and may be served by personal delivery of the summons to 300 Alamo Plaza, San Antonio, Texas 78205.

14. Defendant George P. Bush is sued in his official capacity as Commissioner of the Texas General Land Office. Service upon Commissioner Bush may be accomplished by personal delivery of the summons to him, at 1700 N. Congress Ave., Suite 935, Austin, Texas 78701-1495.

C. JURISDICTION/VENUE

15. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

16. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court. Plaintiffs' claim for nominal damages is authorized by 42 U.S.C. § 1983.

17. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

D. BACKGROUND

18. This case stems from the initiative by Defendant George P. Bush, Commissioner of the Texas General Land Office ("Bush") Douglass W. McDonald, CEO of the Alamo Trust, Inc. ("McDonald"), City of San Antonio ("COSA"), Alamo Trust, Inc. ("ATI") and the Texas General Land Office ("GLO") to redevelop Alamo Plaza and the surrounding area, including the San Antonio de Valero Mission ("Alamo"), officially known as the Alamo Redevelopment Plan (hereinafter, "Alamo Plan").

19. As a part of the process to redevelop the Alamo Complex, the grounds surrounding the Alamo Chapel will be transformed by extensive construction that is required by the Alamo Plan. The Alamo Plan calls for the construction of a museum, the lowering of the grade of the existing plaza, relocating the Alamo Cenotaph, reconstructing the cannon ramps from the 1836 battle, planting over 100 trees and adding concrete sidewalks and various other renovations.

20. On or about 2014, the COSA established the twenty-one member Alamo Citizens Advisory Committee ("ACAC") to "create a vision and guiding principles for the redevelopment of Alamo Plaza and the surrounding area, and assisting in the development of the scope of work for a request for qualifications (RFQ) for development of a master plan for the Alamo area." Ramon Vasquez, a member of the Tap Pilam Coahuiltecan Nation ("TPCN") was appointed by San Antonio Mayor Julian Castro to serve on the ACAC as the Mayor's Representative for the history and archeological category.

21. On or about December 2014, the COSA adopted the Guiding Principles developed by the Citizens Advisory Committee that included the cemetery protections. See attached protocol attached hereto and incorporated by reference as Exhibit “A”.

22. On October 15, 2015, the San Antonio City Council executed a cooperative agreement among the GLO, Alamo Endowment Board, and the City of San Antonio regarding the Joint Master Plan for the Alamo Historic District and the Alamo Complex. The Agreement outlines the roles and responsibilities of each party as well as the management and oversight structure for the master plan’s development and adoption. The agreement established the Vision and Guiding Principles developed by the ACAC as the foundation for the Master Plan and expanded the Committee’s membership.

23. Mr. Vasquez, serving on the ACAC, repeatedly raised the issue of the existence of the Mission San Antonio de Valero Cemetery (“Cemetery”) at the Alamo complex and the applicability of the City of San Antonio’s Unified Development Code.

24. Further, in the summer of 2016, TPCN provided on-site tribal monitors for the first excavation at the Alamo under the Alamo Plan. In July 2016, the TPCN were asked by the COSA, Bush and McDonald to bless the Alamo Chapel and the project. Later that summer, human remains were discovered in an archeological dig on the Alamo Complex. The remains were turned over by a City Archeologist to TPCN for reinterment on the Alamo Complex where they were discovered.

25. On April 17, 2017 Mr. Vasquez submitted human remains protocols to the Alamo Plan consultants, at their request, which included TPCN representation as the culturally affiliated tribal community. However, things took a dark turn at the end of 2017. Specifically, Douglass

McDonald assumed control of the Alamo Plan and the project began to deviate from its initial course with respect to protections for the cemetery and its compliance with federal, state and local regulations.

26. On August 27, 2018, Mr. Vasquez sent the entire ACAC, THC, COSA, GLO, National Park Service, and Alamo Trust a letter addressing concerns that the required regulatory processes regarding cemeteries had not been built into the COSA lease agreement with GLO and advising them to do so. See letter attached hereto and incorporated by reference as Exhibit “B”.

27. On October 5, 2018 Raymond Hernandez, Tribal Council Member of the TPCN, submitted concerns to the Historic Design and Review Committee of COSA (“HDRC”) that cemetery protection laws, including the National Historic Preservation Act, were not being followed by the GLO and Alamo Trust. See letter attached hereto and incorporated by reference as Exhibit “C”.

28. On October 18, 2018 the THC confirmed in a letter to Mr. Vasquez that the “Alamo Cemetery” was recorded in 2005 in the Bexar County Cemetery Survey as Cemetery ID BX-C299 and appears on the THC Historic Sites and Archaeology Sites Atlases as occupying the totality of the current Alamo Plaza. The letter also addressed concerns regarding cemetery protections by concluding that they cannot be fully addressed until a “comprehensive archeological and archival study” is conducted. See letter attached hereto and incorporated by reference as Exhibit “D”.

29. As a result of the change in policy to exclude cemetery protections and standard archaeological practices, the Plaintiffs became concerned as the Alamo and the grounds surrounding it contains a historically documented mission cemetery that includes the remains of

many ancestors of the Tap Pilam Coahuiltecan Nation, other federally recognized tribes, Spanish soldiers, Canary Islander settlers, African settlers, Mexican soldiers, Battle of the Alamo Defenders and even a former provincial Governor of Texas. In fact, the burial book of the Mission San Antonio de Valero contains over 1,300 entries. As a result of the concerns, on or about October 15, 2018, the TPCN and the San Antonio Missions Cemetery Association filed a Notice of the Existence of Abandoned or Unknown Cemetery in the Real Property Records of Bexar County, Texas. See Real Property records attached hereto and incorporated by reference as Exhibit “E”.

30. Sec. 35-634 of the City of San Antonio’s Unified Development Code entitled “Cemeteries” states that: “All applicants for permits, excluding burial permits, affecting cemeteries shall be referred to the city historic preservation officer for the purpose of determining whether or not the cemetery is historically, culturally, architecturally, or archaeologically exceptional or significant. If the cemetery is determined by the city historic preservation officer to be exceptional or significant, any proposed change, excluding burials, must be presented to the historic and design review commission for approval of planned work. If a court of competent jurisdiction has granted permission for cancelation or destruction of such cemetery, any plans for new construction must be approved thereafter by the historic and design review commission before construction commences. The historic and design review commission shall be governed in its recommendations by regulations set forth in Texas state law for cemeteries excluding burial permits.” This procedure is necessary to avoid, minimize or mitigate any adverse effects on cemeteries such as the Cemetery at the Alamo. Defendants’ have failed to follow this provision and continue to publicly deny the existence of a cemetery at the Alamo Complex despite ample evidence.

31. Further, Sec. 35-633(a) of the City of San Antonio's Unified Development Code states that: "In evaluating archeological studies and treatment plans for archeological sites, the historic preservation officer and the HDRC will apply the criteria for effect to, and significance of, archeological sites in the Antiquities Code of Texas and in the regulations of the National Advisory Council on Historic Preservation, treatment of archeological properties under authority of the executive director of the Advisory Council, National Historic Preservation Act, and Executive Order 11593." Put simply, the City of San Antonio's Unified Development Code not only requires certain steps and plans to mitigate adverse effects to historical and archeological sites, it mandates that the National Historical Preservation Act procedures apply. The Act requires certain individuals, such as the Plaintiffs, the opportunity to participate in the process. Such plans and procedures are necessary to seek ways to avoid, minimize or mitigate any adverse effects on projects such as the Alamo Plan. At this stage of planning all Parties operated under the premise that all local, state and federal rules related to archaeological sites and cemeteries applied. In 2016, Mr. Vasquez and the TPCN were tasked with assisting the Alamo Plan consultants with developing the Native American history portion of the Alamo Plan. On December 23, 2016, at the request of Alamo Plan consultants, Mr. Vasquez submitted a proposal for development of the Alamo Narrative on the site, which highlights the families who descend from the Alamo Mission and are current members of the TPCN. See proposal attached hereto and incorporated by reference as Exhibit 'F'.

32. Further, on or about October 30, 2018, Plaintiffs submitted a Historical Texas Cemetery Application for the Mission San Antonio de Valero Cemetery ("Application"). See application attached hereto and incorporated by reference as Exhibit "G".

33. On or about January 24, 2018, the Application was heard by the Antiquities Advisory

Committee of the THC. Alamo Trust filed a letter with the THC asking that the designation be denied for the reason that “there was no Historic Cemetery on the Alamo property.” The Commissioners discussed the Application and decided to “table” and NOT reject the Application and tasked the THC staff to work with Plaintiffs to better define the cemetery’s boundaries and bring back a recommendation for consideration. See the Alamo Trust letter denying a cemetery exists attached hereto and incorporated by reference as Exhibit “H”.

34. On or about January 26, 2019, Plaintiffs contracted with GTI Environmental, LLC, a professional archeological consulting firm, to generate a report citing the archival, archeological and historical evidence of the boundaries of the Mission Cemetery. See report attached hereto and incorporated by reference as Exhibit “I”.

35. On or about February 6, 2019, Ramon Vasquez, authorized representative of the Plaintiffs, met with THC staff in Austin to discuss next steps. In attendance were Jenny McWilliams, Charles Sadnick and Carylin Hammons. Also, Holly Houghton, Tribal Historic Preservation officer for the Mescalero Apache Tribe, whom also have historic ties with the Mission but no known ancestors, attended at the Plaintiff’s request.

36. On February 8, 2019, the THC sent a letter to Alamo Trust with regard to the human remains protocols filed with the Antiquities Permit that “many of the actions proposed in this draft, including leaving unintentionally encountered interments *in situ* and/or moving remains to another designated space, require a designated “cemetery” as defined in the Health and Safety Code Chapter 711.011[4]” and that THC recommended that ALAMO TRUST and GLO assist in the effort to define the Mission Valero/Alamo Cemetery boundaries and develop a comprehensive human remains treatment plan that includes a cemetery management plan that

complies with the state law. See letter attached hereto and incorporated by reference as Exhibit “J”.

37. On or about February 9, 2019, Ramon Vasquez, Tap Pilam Tribal Council member Linda Ximenes and Tap Pilam Tribal member Sonia Jimenes, met with Victoria Gonzales, the Senior Policy Advisor for San Antonio Mayor Ron Nirenberg, Kay Hinds, City of San Antonio Archaeologist, and Rhea Roberts representing the City Manager of the City of San Antonio. Mrs. Gonzales informed them that the Mayor authorized the City Archaeologist to work with Tap Pilam Coahuiltecan Nation and the San Antonio Missions Cemetery Association to define the boundaries per the THC mandate.

38. Shortly thereafter, Plaintiffs received correspondence from Carylin Hammons, current THC staffer, encouraging the Plaintiffs to limit the boundaries of the application only to the Alamo Chapel and not the grounds. See letter attached hereto and incorporated by reference as Exhibit “K”.

39. Plaintiffs also received correspondence from Mark Denton, former Senior Lead Reviewer of the THC that stated that in his professional opinion the mission cemetery boundaries should be:

“Houston Street to Crocket Street for the north/south boundaries, the back (east side) of the chapel as the eastern boundary line and the street curve immediately west of the Campo Santo¹ as the western boundary”.

This opinion closely models that as originally requested in Plaintiffs’ Application. See letter attached hereto and incorporated by reference and incorporated by reference as Exhibit “L”.

¹ Campo Santo is a colonial-era Spanish term for cemetery, literally “holy ground”.

40. On or about February 19, 2019, Ramon Vasquez, Tap Pilam Tribal Council Member, Raymond Hernandez, Tap Pilam Tribal member and Researcher, Izel Lopez met with Kay Hindes, City of San Antonio's Archaeologist and Rhea Roberts, City of the San Antonio City Manager's Office in order to update them regarding the position of Carylin Hammons trying to limit the boundaries of the Mission Cemetery to the Alamo Chapel alone and excluding the remainder of the documented Mission Cemetery. Hindes stated that she believed the boundaries for the Cemetery should include the inside of the Chapel, the area in front of the Chapel and in front of the Federal Post Office on Houston Street, which are in line with the Plaintiffs' original Application and the opinion of Mark Denton.

41. On or about March 11, 2019, Ramon Vasquez emailed Charles Sadnick of the THC informing him that the San Antonio Mayor had instructed the City Archaeologist to work with Plaintiffs to define the Mission Cemetery Boundaries and that this process would be completed in time for the July 2019 quarterly meeting of the THC. Sadnick responded that the THC "looks forward to receiving your resubmission, and our staff remains on hand to assist". See email attached and incorporated by reference as Exhibit "M".

42. On or about March 14, 2019, Mr. Vasquez after repeated requests and denial for inclusion on the Archaeological Advisory Committee under the Human Remains Protocols adopted by the GLO/ATI, received an email response from Casey Hanson of the THC stating:

"the Alamo is not a Federal Agency and the project has no Federal hook so there is no reason that the ACHP² should have been notified about the project. If they were notified, the ACHP could not and would not agree to be a consulting party because this is not

² The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and productive use of our nation's historic resources, and advises the President and Congress on national historic preservation policy.

Section 106 and there is no Federal Agency to advise. Similarly, the ACHP would never make the decision for or against including any consulting party. I don't think they are being truthful. As far as I know the Alamo and the GLO are making the decisions and I am not aware of anyone with the authority besides those entities that make those decisions. **In my opinion, if they do not include you, as a representative of one of the major descendant communities, then the committee is a complete sham."**

See letter attached hereto and incorporated by reference as Exhibit "N".

43. On or about March 29, 2019 Plaintiffs were notified by Charles Sadnick that the GLO submitted a competing application for Historic Cemetery Designation that included only the Alamo Chapel. Admitting for the first time of the existence of the Cemetery at the Alamo, this was a dramatic reversal by the GLO who could no longer hold the intellectually dishonest position that no such cemetery exists. However, the extremely narrow boundary definition was strategically designed to achieve their goal of not complying with local, state and federal laws protecting cemeteries and archaeological sites on the project. See Application attached hereto and incorporated by reference as Exhibit "O".

44. Further, on or about April 1, 2019, the Plaintiffs received a report from GTI Environmental, LLC which shows ample evidence that the boundaries of the Mission Cemetery extend outside the walls of the Alamo Chapel, including a burial site for non-baptized Indians outside of the walls of the Mission. See Report attached hereto as Exhibit "I".

45. It should be pointed out that while the Plaintiffs were being excluded by Bush and McDonald from the Archaeological Advisory Committee on the Alamo Plan, TPCN and other lineal descendant groups, were engaged by the COSA to participate on the Maverick Plaza/La

Villita Project and to develop its human remains protocols. The Maverick Plaza site is the 2nd location of Mission San Antonio de Valero and is historically and archaeologically similar to the Alamo Complex, which is the 3rd location of Mission San Antonio de Valero. The Maverick Plaza site is physically located just a few blocks south of the Alamo Complex. The Human Remains Protocols on the Maverick Plaza project state “Historic burials and cemeteries, including Native American burials and cemeteries, shall be treated in accord with provisions of Chapters 711 and 715 of the Health and Safety Code.” TPCN is currently actively participating on the Maverick Plaza project.

46. On May 10, 2019, the THC approved the Historic Cemetery Designation for the Mission San Antonio de Valero Cemetery. A Declaration of Dedication was filed by the THC in the Real Property Records of Bexar County stating that “The Texas Historical Commission, an agency of the State of Texas, does hereby certify and declare: that a cemetery deemed worthy of recognition for its historic associations...has been recognized by the Texas Historical Commission as a Historic Texas Cemetery...” and included a map of the cemetery which includes all of Alamo Plaza and the Alamo Chapel. See attached hereto and incorporated by reference as Exhibit ‘P’.

47. On July 9, 2019, ACAC received a copy of human remains protocols adopted for the Alamo Plan which officially created the Alamo Mission Archaeology Advisory Committee (“AMAAC”). The protocol was alarming as it specifically excluded reference to the City of San Antonio’s Unified Development Code which mandates that the National Historical Preservation Act procedures apply to the process which requires certain individuals such as the Plaintiffs in this case the opportunity to participate in the human remains protocol process. Specifically, the Protocol adopted for the Alamo Plan (“Human Remains Protocol”) created a committee of only

federally recognized Indian tribes and excludes the Plaintiffs by making an arbitrary statement that they are voluntarily applying the Native American Graves Protection Act (“NAGPRA”). It should be noted that the Mission San Antonio de Valero Cemetery is not a Native American burial ground. It is a Catholic Cemetery, consecrated according to the Canon Law of the Catholic Church and has never been deconsecrated. It contains the remains of baptized American Indians, Spanish and Mexican settlers/soldiers and the Defenders of the Battle of the Alamo (1836). In this way Defendants have weaponized NAGPRA to exclude the American Indians most represented in the burials of Mission San Antonio de Valero, the descendants of the Spanish and Mexican settlers and soldiers and the descendants of the Alamo Defenders. To add insult to injury, among the federally recognized tribes allowed on the AMAAC are ones who are historically responsible for the deaths of many of those buried in the Mission San Antonio de Valero cemetery. Furthermore, most of the federally recognized tribes allowed on the AMAAC lack any historic connection to Mission San Antonio de Valero and some have very different funerary practices and beliefs regarding burials than Plaintiffs. Put simply, the Defendants are ignoring the City of San Antonio’s Unified Development Code and arbitrarily applying NAGPRA for the purpose of excluding the Plaintiffs and other lineal descendants from participation. The reason for this is obvious, the Defendants are planning to conduct their archaeological activities in a manner that violates local, state and federal laws in an attempt to reduce cost and time. See Human Remains Protocol Attached hereto and incorporated by reference as Exhibit “Q”.

48. In addition, the Human Remains Protocol specifically states that it will follow the State of Texas cultural resources laws and laws regarding human remains as defined by the Texas Health and Safety Code. However, as stated above, the Defendants have consistently denied that

a cemetery exists at the Mission, which is intellectually dishonest as experts, archaeologists as well as any reasonable person would conclude that Missions maintain cemeteries especially with the history of the Alamo.

49. It should also be pointed out that the Alamo Plan purposefully excludes any possibility to discover human remains as the plan only calls for 18 inches of excavation on Alamo Plaza where most burials are located, when the actual sub grade is 6 feet deep. By intentionally digging above interments, the Defendants have violated Texas Natural Resources Code §191.055(3) which requires “all operations conducted under permits or contracts set out in Section 191.054 of this code must be carried out...in such manner that the maximum amount of historic, scientific, archaeological, and educational information may be recovered and preserved in addition to the physical recovery of items.”

50. The Plaintiffs’ motivation has always been to ensure that their ancestors’ remains are treated respectfully and preserved in the like manner as the other projects stated above. It appears that the Defendants want to ignore any issues of remains and fast track the project with disregard for the interments and historic cemetery on the Alamo Complex. In fact, the week of July 19, 2019, excavations under the new protocols began at the Alamo, with the GLO/ATI still publicly denying the existence of a cemetery on the site. Therefore, Plaintiffs were compelled to seek relief in this Court.

51. On August 14, 2019 and September 23, 2019 human remains were in fact found at the Alamo site and again in early December 2019, three human skeletons were found at the Alamo site and such findings will continue to happen in the future as the progress of the construction proceeds. Bush and McDonald have not allowed Plaintiffs to participate but have allowed

federal tribes to participate which, as stated above, have different religious customs, ancestral ties, burial practices and different languages from the Plaintiffs.

E. FIRST CLAIM FOR RELIEF
(Equal Protection—Fourteenth Amendment)

Plaintiffs hereby incorporate by reference all stated paragraphs.

Claims against Commissioner George P. Bush

52. There is no doubt that Bush is the head of policy decisions for the GLO and was in charge of implementing the policy to set up the structure of the Alamo Trust, Inc., and several nonprofits. Further, the Bush policy was implemented by McDonald, who formed the archaeological committee and drafted the human remains protocol which officially excluded the Plaintiffs from the project. As a result of Bush's policy to play hide-the-ball by creating various entities, which was intentionally calculated to not only pull the curtain closed and install a non-transparent policy to facilitate secret meetings and to shelter the major players involved in the project, but, more importantly, to craft a way to block the Plaintiffs from participating in the project, as he wants to rush the project through without distractions from any persons who would require that their ancestors be respected. By reason of the aforementioned policy, created, adopted, and enforced under color of state law, Defendant Bush has unconstitutionally deprived Plaintiffs of their fundamental First Amendment rights to conduct their religious practices and denies them equal protection of the law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. Specifically, Defendant Bush, by adopting his policy of exclusion and lack of transparency are currently preventing Plaintiffs from participating in the excavation even though the members of the Tap Pilam Coahuiltecan Nation, San Antonio Missions Cemetery Association and Raymond Hernandez are next of kin. Further, there is no

doubt that all other similar projects currently and, in the past, have utilized human remains protocols that allowed the next of kin to participate. However, in this case Defendant Bush's policy, by voluntarily adopting NAGPRA, and ignoring the City of San Antonio's Unified Development Code, which mandates procedures and protocols under 36 CFR Part 800 of the National Historic Preservation Act, deprives Plaintiffs of rights and privileges afforded them under local, state and federal laws and discriminates against them based on their national origin. Such voluntary selective application of NAGPRA results in the exclusion of Plaintiffs, who are next of kin and entitled to participate.

53. Further, Bush created a policy that excludes the Plaintiffs from participating in the human remains protocol which is essential to the performance of their religious practices. Specifically, all similar and related projects currently and, in the recent past, have utilized human remains protocols that allowed the Tap Pilam Coahuiltecan Nation to participate. However, in this case, Defendants have selectively applied and interpreted federal laws, not applicable to the project by their own admission, in a manner that only grants access to federally recognized Indian tribes and ignored other federal laws and the City of San Antonio's Unified Development Code. Such arbitrary decisions to pick and choose which laws to apply is not only confusing but was calculated to exclude the Tap Pilam Coahuiltecan Nation from participating on the Archaeological Committee established by the Bush policy and implemented by McDonald who developed the human remains protocols on the project.

54. Further, Bush is publicly stating that there is no cemetery located at the Alamo. This assertion is intellectually dishonest and being used solely to skirt federal, state and local laws designed to protect historic cemeteries. It is common knowledge that every Spanish Colonial Mission established and maintained a cemetery, and there is ample evidence that a cemetery was

established and continues to exist at the Alamo. In fact, the surviving burial book of Mission San Antonio de Valero contains over 1,300 entries. Most of these burials are of American Indians, but the book also records burials of Presidio Soldiers, settlers and servants of various racial categories. Further, the “Alamo Cemetery” was recorded in 2005 in the Bexar County Cemetery Survey as Cemetery ID BX-C299 and appears on the THC Historic Sites and Archaeology Sites Atlases as occupying the totality of the current Alamo Plaza. In addition, on or about October 15, 2018, the TPCN and the San Antonio Missions Cemetery Association filed a Notice of Unknown or Abandoned Cemetery in the Real Property Records of Bexar County, Texas. Further, on or about October 30, 2018, Plaintiffs submitted a Historical Texas Cemetery Application for the Mission San Antonio de Valero Cemetery (“Application”) to the Texas Historical Commission, which was granted on May 10, 2019, resulting in a Declaration of Dedication by the THC filed in the Real Property Records of Bexar County stating that “The Texas Historical Commission, an agency of the State of Texas, does hereby certify and declare: that a cemetery deemed worthy of recognition for its historic associations...has been recognized by the Texas Historical Commission as a Historic Texas Cemetery...” and included a map of the cemetery which includes all of Alamo Plaza and the Alamo Chapel. Bush’s absurd stance that a cemetery does not exist at the Alamo is solely an attempt to exclude the Plaintiffs from the process at all costs.

A. Bush’s discriminatory policy to exclude Plaintiffs and include other Indians Tribes (under the guise of federal policy) is discriminatory and treats similarly situated persons different.

55. Most disturbing, is the fact that the Bush policy allows five federally recognized Indian tribes to serve on the committee as Tribal monitors. It should be pointed out that Bush takes the

position that since federally recognized Indian tribes are represented at the site there is no discrimination. However, such logic is not only flawed but is appalling because Bush wants to believe that all Indians are the same. Nothing is further from the truth. Each Indian tribe has their own customs, religious beliefs, funerary practices and speak different languages. Just because Federal Indian tribes are located on the site does not make it okay to exclude the Tap Pilam, and is wholly discriminatory. The Indian tribes that Bush and McDonald have chosen at the exclusion of the Tap Pilam are not native to the area, four have no historic connection to Mission Valero, while the fifth, the Apache, were the historical enemies of the Coahuiltecans and were responsible for the deaths of many of those buried at the site. These actions by Bush are facially discriminatory and inflammatory. They have denied a culturally affiliated tribal community representation and engagement, yet invite unaffiliated tribes, some from out of state, with vastly different cultural and religious beliefs, differing funerary practices and no historical connection to the site to stand in their place and rely on the erroneous premise that Plaintiffs are not Indians because they are not federally recognized. The reason for this is plainly obvious, a culturally affiliated tribe, such as Tap Pilam Coahuiltecan Nation will have a greater degree of oversight, concern and care for remains that are lineal ancestors than people who lack such attachment. Bush and the GLO are seeking to skirt the oversight and protections of culturally affiliated communities that Congress and the Texas Legislature have determined is necessary and in the public interest for a project such as this. Bush's policy by only allowing other federally recognized Indian tribes to participate and exclude Plaintiffs is shameful as federal recognition does not dictate ethnicity or race. Bush's policy is based on the erroneous premise that somehow Plaintiffs are not Indians because they are not recognized by federal policy and therefore should not be included in the project. Such backward antiquated logic is not proper and is hurtful, and

should be seen for what it actually is...discriminatory just because Plaintiffs has not been “recognized” by the federal government.

56. It should be pointed out that on August 14, 2019 and September 23, 2019 human remains were in fact found at the Alamo site and again in early December 2019, three human skeletons were found at the Alamo site. Plaintiffs have had no input or notice of the remains found which, are very likely and most probably, the ancestors of the Plaintiffs. However, the tribal monitors (federally recognized tribes) selected by Bush’s policy have been able to participate and, as stated above, are actually dismissive of any local cultural concerns. Further, as stated above, Bush’s policy of excluding the Plaintiffs, is currently denying Plaintiffs of their rights to perform the religious ceremony and to honor their kin whom are no doubt buried at the Alamo site. Such exclusion comes at a high price to the Plaintiffs as their core fundamental belief is that spiritual harm will come to them as a result of not performing the ceremony for the newly discovered remains as well as the remains that are currently located at the site.

57. Therefore, the exclusion of the Tap Pilam Coahuiltecan Nation and the inclusion of the federally recognized Indian tribes is racially discriminatory, as such, strict scrutiny applies. There is no compelling interest for Bush to exclude the Plaintiff Indian Tribe that is done through the least restrictive means. The federally recognized Indians chosen to participate have no interest in the Alamo at all and are included only because they are a federally recognized Indian tribe. The included federally recognized Indian tribes are of differing race, have a different religion, and/or creed from the Plaintiffs. Further, as stated throughout this motion, by choosing Federal Indian tribes with no concern or respect for the Alamo project and excluding the Plaintiffs and denying that they are in fact Indians, is actually more damaging to the project.

Since the current Indian monitors have no interest in the preservation of the Alamo or the future of the mission.

58. As a direct and proximate result of Defendants' violation of the Equal Protection Clause of the Fourteenth Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

Claims against Alamo Trust CEO Douglass W. McDonald

59. Texas Natural Resources Code § 31.451(a), vests the power over the Alamo "solely in the GLO." However, the statute also authorizes the GLO to "partner with a qualifying nonprofit organization. . . for the performance of any activity." Tex. Nat. Res. Code Ann. § 31.451(d). Pursuant to the legislature's mandate, Bush created the Alamo Trust, Inc. and appointed Douglass W. McDonald as the CEO. Douglass McDonald is the CEO of the Alamo Trust nonprofit and runs the day to day affairs of the Alamo. McDonald, actually executed and implements the Bush Policy described above and formed the Archaeological Committee and drafted the human remain protocol policy at issue in this lawsuit as discussed above.

60. It should be pointed out at the onset that McDonald is a state actor for all purposes as Bush organized and set up the nonprofit pursuant to Tex. Nat. Res. Code Ann. § 31.451(d). The Alamo Trust uses state moneys and is subject to all Texas state open meetings and open records laws. In addition, a private party involved even though not an official of the State, can be liable under § 1983. "Private persons, jointly engaged with state officials in the prohibited action, are acting "under color" of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in

joint activity with the State or its agents”*Sparks v. Duval County Ranch Co.*, 604 F.2d 976, 982-983.

61. There is no doubt McDonald participated with Bush by masterminding a campaign by creating an archaeological committee and drafting the human remains protocol policy which changed specific protocols and applied different rules and laws with the sole purpose to exclude the Plaintiffs from participating in the removal or safeguarding of the remains of their decedents that are buried at the Alamo site. Specifically, McDonald worked in concert with Bush to change the protocol that has always been in place for past projects and was calculated and designed to intentionally exclude the Plaintiffs based on the erroneous premise that they are not a federally recognized Indian Tribe. McDonald is excluding the Tap Pilam and allowing other Indian tribes that are not related at all to the Mission and are not even from the City to participate and monitor the site. There is no doubt that the Plaintiffs are being treated differently.

62. Further, of the five federally recognized Indian tribes selected to serve on the committee, none are native to the area, four have no historic connection to Mission Valero, while the fifth, the Mescalero Apache, were the historical enemies of the Tap Pilam Coahuiltecan and were responsible for the deaths of many of those buried at the site.

63. Therefore, the exclusion of the Tap Pilam Coahuiltecan Nation and the inclusion of the federally recognized Indian tribes is racially discriminatory, as such, strict scrutiny applies. There is no compelling interest for Bush to exclude the Plaintiff Indian Tribe that is done through the least restrictive means. The federally recognized Indians chosen to participate, have no interest in the Alamo at all, and just because they are an Indian tribe does not mean all Indians are the same and are represented. Specifically, Indian tribes have different funerary practice,

customs, religion and even speak different languages. Further, as stated throughout this motion, by choosing Federal Indian tribes with no concern or respect for the Alamo project further shows discriminatory intent by McDonald. McDonald's main argument is that the Tap Pilam are not a federally recognized Indian tribe as such they are just like everyone else and have no claim to participate in the disposition or reinterment of their ancestors. However, The Tap Pilam Coahuiltecan Nation is a tribal community of American Indians who trace their ancestry to the Spanish Colonial Missions of Texas and Northeastern Mexico, including Mission San Antonio de Valero, which is also known as "The Alamo." Plaintiff Raymond Hernandez is an enrolled member of the Tap Pilam Coahuiltecan Nation who is a direct descendant of ancestors from Mission San Antonio de Valero and serves on the Tribal Counsel of the Nation. Plaintiff San Antonio Missions Cemetery Association is a nonprofit association of lineal descendants of those buried in the San Antonio Missions Cemeteries, including the Mission San Antonio de Valero Cemetery. For three decades, the TPCN has participated in consultations with various federal agencies, state agencies and tribal nations regarding the disposition of human remains associated with the people culturally affiliated with the Tap Pilam CN.

64. There is no doubt that this case deals with intentional discrimination to exclude the Tap Pilam and its members from participating in the project even though their ancestors are interred in the cemetery located at the Mission. There is no question that the Plaintiffs are the next of kin and are the ancestors to the remains buried at the Alamo Mission that has been in existence in the state of Texas from the beginning.

F. SECOND CLAIM FOR RELIEF

(First Amendment – Free Exercise Claim)

Plaintiffs hereby incorporate by reference all stated paragraphs.

Plaintiffs' Religion.

65. The Tap Pilam core religious beliefs require that when a body is interred a ceremony is performed every year and the elders take a vow to perform such ceremony each year. In addition, when a body is moved, a particular ceremony must be performed known as the “forgiveness ceremony” a ceremony for forgiveness for disturbing the final resting place. Members of the Tap Pilam tribe have taken a sacred vow to protect the remains and they are responsible for making sure that the yearly ceremony is uninterrupted and that the Plaintiffs have access to the burial sites every year to perform their religious ceremony. This religious practice is not only limited to the Alamo site but other sites where bodies have been disturbed such as Fort Hood and other mission locations. The Tap Pilam burial and funerary practices are unique and is at the core of their religious beliefs. Burials are performed at specific times of the year and at the change of the season. Further, it is their belief that when a ceremony is performed it is considered a sacred obligation that the spirits will guide and heal and give blessings as a result of the practice. However, if the ceremonies are not performed, they believe that there will be spiritual repercussions and that evil will come their way.

66. Pursuant to the Plaintiffs' religious beliefs described above, every year for the past 24 years they have conducted their ceremony for the bodies buried and reburied at the Alamo site known as the Sunrise Memorial Ceremony/ El Llanto in the Alamo Chapel during La Semana de Recuerdos (Week of Remembrances). This annual remembrance ceremony at the Alamo Chapel is the highlight of a weeklong holiday each September among the tribe known as the “La Semana de Recuerdos” (The Week of Remembrance). It includes the Fiesta de Recuerdos (“Feast of

Remembrance”) and concludes with the El Llanto de los Muerto (known as “the wailing”). It is a fundamental ceremony based on their religious beliefs described above. As a result of the policy created by Bush, on September 7, 2019, Plaintiffs TPCN and Raymond Hernandez were denied by permission by McDonald to gather inside the Alamo Chapel for the prayer service, a tradition allowed by the Alamo for the past 24 years, despite allowing tourists and members of the public to enter.

Strict Scrutiny

67. Policy is subject to strict scrutiny if it is not generally applicable, not neutral, or employs a system of individualized exemptions. Here, Bush’s policy, as implemented by McDonald, violates the Free Exercise Clause in multiple ways. First, the policy put in place by Bush and implemented by McDonald is not generally applicable because they create categorical exemptions for federally recognized Indian tribes. As stated above, Bush created a policy which is implemented by McDonald, that excludes the Plaintiffs from participating in the human remains protocol which is essential to the performance of their religious practices. Specifically, Bush’s policy, implemented by McDonald, allows five federally recognized Indian tribes to serve on the committee as Tribal monitors. It should be pointed out that Bush and McDonald take the position that since federally recognized Indian tribes are represented at the site there is no discrimination. However, such logic is not only flawed but is appalling because Bush wants to believe that all Indians are the same. Nothing is further from the truth. Each Indian tribe has their own customs, religious beliefs, funerary practices and speak different languages. Just because federal Indian tribes are located on the site does not make it okay to exclude the Tap Pilam, and is wholly discriminatory. The fact that Bush and McDonald are allowing other Indian

tribes with completely different religious practices when it comes to the subject of human remains, shows a preference to other religions to the exclusion of the Plaintiffs.

68. The Indian tribes that Bush and McDonald have chosen at the exclusion of the Tap Pilam are not native to the area, four have no historic connection to Mission Valero, while the fifth, the Apache, were the historical enemies of the Coahuiltecans and were responsible for the deaths of many of those buried at the site. These actions by Bush are facially discriminatory and inflammatory. They have denied a culturally affiliated tribal community representation and engagement, yet invite unaffiliated tribes, some from out of state, with vastly different cultural and religious beliefs, differing funerary practices and no historical connection to the site to stand in their place and rely on the erroneous premise that Plaintiffs are not Indians because they are not federally recognized.

69. The reason for this is plainly obvious, a culturally affiliated tribe, such as Tap Pilam Coahuiltecan Nation will have a greater degree of oversight, concern and care for remains that are lineal ancestors than people who lack such attachment. Bush and the GLO are seeking to skirt the oversight and protections of culturally affiliated communities that Congress and the Texas Legislature have determined is necessary and in the public interest for a project such as this. Bush's policy by only allowing other federal recognized Indian tribes to participate and excluding Plaintiffs is shameful as federal recognition does not determine ethnicity or race. Bush's policy is premised on the rationale that somehow Plaintiffs are not allowed to participate because they are not in fact Indians solely based on the erroneous premise that they are not federally recognized. Such backward antiquated logic is not proper and is hurtful, and should be seen for what it actually is...discriminatory just because Plaintiffs has not been "recognized" by the federal government.

70. Further, the Defendants are publicly stating that there is no cemetery located at the Alamo. This assertion is intellectually dishonest and being used solely to skirt federal, state and local laws designed to protect historic cemeteries and to downplay the Plaintiffs' ties to the missions. It is common knowledge that every Spanish Colonial Mission established and maintained a cemetery, and there is ample evidence that a cemetery was established and continues to exist at the Alamo. There is no doubt that the Defendant Bush and McDonald are purposely making spurious claims to exclude the Plaintiffs from the process at all costs.

71. Bush is the head of policy decisions for the GLO and was in charge of implementing the policy to set up the structure of the Alamo Trust, Inc., and several nonprofits. As a result of Bush's policy to play hide-the-ball by creating various entities, which was intentionally calculated to not only pull the curtain closed and install a non-transparent policy to facilitate secret meetings and to shelter the major players involved in the project, but, more importantly, to craft a way to block the Plaintiffs from participating in the project, as he wants to rush the project through without distractions from any persons who would require that their ancestors be respected. By reason of the aforementioned policy, created, adopted, and enforced under color of state law, Defendants Bush and McDonald have unconstitutionally deprived Plaintiffs of their fundamental First Amendment right to conduct their religious practices.

72. Second, Bush's policy and McDonald's implementation of same are not neutral because they favor non-religious reasons over religious ones. Specifically, allowing federal recognized tribes that have different religious practices to participate to the exclusion of the Plaintiffs with known religious ties to the missions. Moreover, because Bush and McDonald have selectively enforced their discriminatory policy against the religious actor, the application of these ordinances to Plaintiffs is not neutral.

73. Third, for the same reasons, Bush's policy and McDonald's implementation constitute a system of "individualized exemptions."

74. Each of these grounds separately makes out a prima facie case that Bush and McDonald have violated Plaintiffs' free exercise rights. The burden then shifts to Bush and McDonald to prove their affirmative defense that their actions withstand strict scrutiny. This affirmative defense fails for three reasons: (1) Bush and McDonald claimed interests in preserving a landmark for the public are not compelling, (2) the Bush policy, as applied to Plaintiffs, does not further those alleged interests, and (3) an absolute prohibition on Plaintiffs' performance of its yearly burial ceremonies is not the least restrictive means of meeting those alleged interests.

75. As stated above, McDonald as the manager of the Alamo via the nonprofit created by the Bush policy denied the Plaintiffs their exercise of religion to perform their yearly ceremony over the bodies that are located at the mission. Furthermore, McDonald denied the Plaintiffs' use of the Alamo Chapel for religious ceremony. The Alamo Chapel has been a place of religious practice for the Plaintiffs and the Mission Indian community for many years. Plaintiffs, members of the Yanaguana Tap Pilam Native American Church of the Americas, Church of Oklahoma and various Christian denominations have been conducting an annual Sunrise Memorial Ceremony/El Llanto ceremony in the Alamo Chapel during *La Semana de Recuerdos* (Week of Remembrances) held each September. Specifically, on September 7, 2019, Plaintiffs TPCN and Raymond Hernandez were denied permission by McDonald to gather inside the Alamo Chapel for a prayer service which has been a tradition allowed by the Alamo for the past 24 years, despite allowing tourists and members of the public to enter. Further, Bush and McDonald have excluded Plaintiffs from the human remains protocol which would allow Plaintiffs to perform their religious ceremony of forgiveness for disturbed human remains.

76. As stated above, bodies were recently discovered and will continue to be discovered throughout this process and by denying Plaintiffs access is a flat-out denial of Plaintiffs' religious beliefs now and in the future.

77. By reason of the aforementioned denial of the Plaintiffs' religious practices, which includes Defendant Bush's policy of exclusion and McDonald's concerted management implementation of same, and described above in detail, created, adopted, and enforced under color of state law, Defendants McDonald and Bush have deprived Plaintiffs of their right to engage in freedom of religion located in the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

78. As a direct and proximate result of Defendants' violation of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

G. FOURTH CLAIM FOR RELIEF
(Due Process—Fourteenth Amendment)

Plaintiffs hereby incorporate by reference all stated paragraphs.

79. By reason of the aforementioned policy created by Bush and McDonald's concerted management scheme discussed in detail above, failure to recognize proper protocols and laws that have been followed on all past projects and that are currently being followed on other projects similar to the Alamo Project, are no doubt crafted to exclude the Plaintiffs from participating in the human remains protocol and the project and to deny them their fundamental constitutional right to freedom of religion. Such actions to change procedures and decisions

solely for the purpose to exclude Plaintiffs from participating is not only repulsive but amounts to Defendant Bush's policy and McDonalds implementation of same which was created, adopted, and enforced under color of state law, Defendants Bush and McDonald have unconstitutionally deprived Plaintiffs of the due process of law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

80. It is a basic principle of due process that a regulation is void for vagueness if its prohibitions are not clearly defined. Defendants Bush and McDonald's implementation and management crafted restrictions to exclude the Plaintiffs as part of the human remains protocols in place facially and as applied to Plaintiffs, offends the Fourteenth Amendment's guarantee of due process by granting a public official unbridled discretion such that the official's decision to limit Plaintiffs' involvement in the process and to limit Plaintiffs exercise of its core fundamental religious practices is not constrained by objective criteria, but may rest on ambiguous and subjective reasons. Specifically, crafting policy to selectively pick and choose which laws apply to the project for the sole intent to allow federal recognized Indian tribes to participate to the exclusion of the Plaintiffs is not based on objective criteria and was arbitrarily applied to craft a policy of exclusion of the Plaintiffs to participate and to exercise their religious practices. Defendants Bush and McDonald denial of the Plaintiffs' participation in the project facially and as applied to Plaintiffs is unconstitutionally vague in violation of the Fourteenth Amendment.

81. As a direct and proximate result of Defendants Bush and McDonald's violation of the Due Process Clause of the Fourteenth Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

H. DAMAGES

82. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

M. ATTORNEY FEES

83. It was necessary for the Plaintiffs to secure the services of Adrian A. Spears II and Art Martinez de Vara to pursue this matter and to file and litigate this lawsuit. Should Plaintiffs prevail in this matter, Plaintiffs respectfully request that the Court award reasonable and necessary attorney's fees and costs incurred in prosecuting this suit as permitted under 42 U.S.C. § 1988 and other applicable law.

N. PRAYER

WHEREFORE, the Plaintiffs request that the Defendants be cited to appear and answer, and that on final trial, the Plaintiffs have the following:

- A) to declare that Defendants violated the First and Fourteenth Amendments to the United States Constitution as set forth in this Complaint;
- B) to preliminarily and permanently enjoin Defendants 1)from violating Plaintiffs' free speech and free exercise of religion; (2) from excluding Plaintiffs' from the Human Remains Protocol, as set forth in this Complaint; (3) from proceeding with construction until the Plaintiffs' are included in the project; (4) from violating provisions of the Texas Antiquities Code that prohibit the archaeological practices being employed by Defendants to evade discovery and excavation of the historic cemetery at the Alamo Complex.

- C) to award Plaintiffs nominal damages for the past loss of their constitutional rights as set forth in this Complaint;
- D) to award Plaintiffs their reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law; and
- E) to grant such other and further relief as this Court should find just and proper.

Respectfully submitted,

**THE MARTINEZ DE VARA LAW
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on January 22, 2020, a complete and correct copy of the foregoing **Plaintiffs' First Amended Original Complaint and Request for Injunction** was filed electronically with the United States District Court for the Western District of Texas, San Antonio Division, with notice of case activity to be generated and sent electronically by the Clerk of the Court with ECF notice being sent to the following counsel of record:

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